

Serial No. 03
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 322 of 2022

Date of Decision: 21.09.2023

Shri. Bonifast Kharbangar Vs. State of Meghalaya & 4 Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P.K. Shati, Adv.

For the Respondent(s) Mr. N.D. Chullai, AAG with
Ms. I. Lyngwa, GA
Ms. R. Colney, GA.

i) Whether approved for reporting in Yes/No
 Law journals etc.:

ii) Whether approved for publication Yes/No
 in press:

Oral:

1. The brief facts of the case is that on the basis of draft rules namely "The Forest Guard School of Meghalaya Training Rules 1994", the writ petitioner after completion of training as Forest Guard was

awarded an “honours certificate” as well as “forest minister prize” in the year 2001, and consequent thereto on 31st October, 2001, was granted two increments w.e.f. 01.08.2001. Thereafter, the petitioner was promoted to the post of Forester Grade-I from the post of Forest Guard on 21st June, 2012. It appears that the respondents on detecting that the two advance increments were afforded on account of the application of the rules, which were yet to be formally notified, the same by the impugned order dated 12th July, 2022, were cancelled and the petitioner was granted a pay scale as indicated in the said impugned order dated 12th July, 2022. The other aspect in the matter, is with regard to the claim of entitlement of the writ petitioner to up-gradation of pay under the MACP scheme, and it has been contended with the re-fixation of pay scale will result in impacting his benefits which would have been derived in the computation of his pension.

2. Being aggrieved with the cancellation of the increments and the impact of the same would have on his pensionary benefits, as he is due to retire on October, 2023, the instant writ petition was filed.

3. Mr. P.K. Shati, learned counsel for the petitioner has submitted that the two advance increments were allowed to the petitioner by the respondents by the application of “The Forest Guard School of Meghalaya Training Rules 1994”, which the respondents had been

following as evidenced by the letter dated 19.03.2020 (Annexure – 15), wherein the respondents, have indicated that the training rules were considered as the guiding principle for smooth running and conduct of Basic Forestry Training. He submits that the respondents are therefore estopped from cancelling the increments, which have been granted by following the said rules. It is also been submitted by the learned counsel that the petitioner now having served for over 10(ten) years, on being promoted to the post of Forester Grade-I, is also due for consideration under the MACP scheme, which is yet to be processed by the respondents. In support of his arguments, with regard to the application of draft service rules, the learned counsel has placed reliance on the case of *High Court of Gujarat & Anr. vs. Gujarat Kishan Mazdoor Panchayat & Ors.* reported in (2003) 4 SCC 712 and also the case of *Union of India Through Govt. of Pondicherry & Anr. vs. V. Ramakrishnan & Ors.* reported in (2005) 8 SCC 394.

4. He then concludes by submitting that the action of the respondents is arbitrary and illegal, inasmuch as, no wrong doing or mis-representation can be attributed to the writ petitioner, in the grant of the two increments, and that with the cancellation, the writ petitioner has been unjustly deprived of the pay scale he was enjoying till the said cancellation. He therefore, prays that the impugned letter dated 12th

July, 2022, be set aside and quashed, and the respondents be directed to process his MACP as expeditiously as possible.

5. Mr. N.D. Chullai, learned AAG assisted by Ms. I. Lyngwa, learned GA for the State respondents has at the outset submitted that, the grant of the two advance increments was on a wrong premise, inasmuch as, “The Forest Guard School of Meghalaya Training Rules 1994” was yet to be formally approved and notified by the State respondents. It is further submitted that in the case of the Forest Guard, who have successfully completed their basic training, one advance increment can be granted only on their promotion to the post of Forester Grade – I. He submits that as the writ petitioner was yet to be promoted at that time or the grant of increments, the same on being detected by the respondents, was therefore sought to be corrected by issuance of the impugned letter, no doubt, after the writ petitioner had already enjoyed the same for over 20(twenty) years. However, he has categorically submitted that there will be no recovery of the payments that have been made to the writ petitioner, and that the impugned order has only cancelled the said entitlement. The learned AAG has then referred to a communication dated 16.09.2002 (Annexure – 6), wherein it has been indicated that under the existing rules, orders, advance increments are allowed to the Government employees for possessing higher or

specific specialised qualifications, than the prescribed minimum qualifications and as such, a Forester Grade –I will be entitled to such advanced increment, as he has obtained a special qualification. The learned AAG on this point has also referred to a letter dated 19.03.2020, wherein he submits, it has been indicated that no extra increment shall be granted to any staff on the ground that he/she has successfully completed the training course. He contends that the advance increments which were granted to the writ petitioner, therefore not being as per the prevalent rules or instructions, the action of the respondents in cancelling the same cannot be said to be arbitrary. With regard to the entitlement of the petitioner under the MACP scheme, it is submitted that the same shall be considered, taking into account the years of service rendered by the petitioner along with entitlement to the same.

6. Having heard the learned counsels for the parties and examined the materials on record, it is seen that the respondents had granted the advance increments to the writ petitioner by adopting the stipulations given in the “Forest Guard School of Meghalaya Training Rules 1994”, wherein at Rule 16(3), the same has been provided. However, the cancellation which has been resorted to by the respondents is on the basis that the said rules are yet to be formally approved and notified, and that the same is only in a draft form, and as such, the application of the

same in the case of the petitioner was on an error and a misunderstanding as to its application. It is further noticed that as per the prevalent instructions, an advance increment also can be granted only on the promotion of the Forest Guard to the post of Forester Grade-I, and that further no extra increment is permissible on completion of training with honours or on receipt of an “honours certificate”.

7. It is a settled law that on detection of any extra payments which were made, in view of mis-interpretation or mis-calculation, the employer or the State respondents are well within the rights to correct the same. In the instant case, what is clearly apparent is that the “Forest Guard School of Meghalaya Training Rules 1994” are yet to be approved or formally notified and as such, the grant of the advance increments cannot be said to be as per any prevalent rule or executive instructions. From the records, it is revealed that no advance increments are admissible to Forest Guards and it is only on promotion thereof, that the same is accorded. The question of recovery which normally arises in such matters, however as categorically submitted by the learned AAG and as evidenced by the impugned letter, has not been contemplated by the respondents, and as such, in this regard no injustice, can be said to have been done to the petitioner.

8. As far as the entitlement of the petitioner to the benefits under the MACP scheme, the learned AAG, as also the affidavit filed on behalf of the State respondents, has recorded that the process for granting MACPs in respect of the petitioner has not yet been completed and as the advance increments granted to him in the year 2001, have to be rationalized and regulated.

9. In this view of the matter, as there is no recovery sought to be made by the respondents, and as the advance increments had been granted on a mistaken interpretation of the prevailing rules, the action of the respondents cannot be said to be arbitrary, and no injustice can be said to have been caused to the writ petitioner.

10. Accordingly, in view of the observations and discussions made herein above, this writ petition is closed and disposed of.

11. All interim orders passed earlier shall stand vacated.

Judge

Meghalaya
21.09.2023
"D.Thabab-PS"